IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10402 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

STATE OF GUJARAT
Versus
RAMSINGBHAI DHIRABHAI NAYAK

Appearance:
1. Special Civil Application No. 10402 of 1998
MR UDAY BHATT AGP for Petitioner No. 1-3
MRS VASAVDATTA BHATT for Respondent NOT

PRESENT

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 14/06/2005

C.A.V. JUDGEMENT

The present petition has been filed by the petitioners challenging the Judgement and Award dtd.31/3/1998 passed by the Labour Court, Godhra in Reference (LCG) No.206 of 1991, whereby the Labour Court directed the petitioners to reinstate the respondent on his original post without back wages, with continuity of service. The Labour Court also directed the petitioners to pay Rs.2000/- to the respondent towards costs and implement the Award within 30 days from the date of publication of the Award.

2. Mr.Uday Bhatt, learned counsel AGP for the petitioners State has mainly argued that the respondent was working as a Daily Wager under the respondent No.2 under the scheme for taking care of plantation from July, 1990 to October, 1990 and he had been paid as per the rules and regulations of the Government as Daily Wager. It is further argued that the respondent has not completed 240 days in any year and has not worked for any over time. It is also argued that the respondent himself has stopped to attend the work; that the

respondent was engaged for casual and seasonal work at the site of nursery which is not covered under the definition of Industry; that no notice has been issued by the respondent to the petitioners before filing reference; that the labour court failed to consider the evidence produced before it; that the labour court failed to consider the written statement filed by the petitioners State and erred in holding that the petitioners have not produced any evidence and remain absence and therefore, the labour court believed the evidence of the respondent; that the respondent has not worked for even a day in Shera Extension Range which is clear from Ex.11; that the provisions of the Industrial Disputes Act are not applicable to the workers who are doing seasonal work. Consequently, it is prayed to quash the imugned Award.

3. Neither anybody appeared on behalf of the respondent nor Affidavit-in-reply has been filed. However, on perusal of the record, it appears that it is the case of the respondent that he was working in the Forest Department since 1 year as an unskilled worker and lastly he was working under the petitioner Nos.2 and 3 in a nursery as a Gardner, but he was not given pay slip, presence card or any overtime; that he was signing the

muster and pay register. However, the petitioner Nos.2 and 3 terminated the service of the respondent on 24/10/1990, without giving any notice, without giving any opportunity of being heard, without giving any retrenchment compensation and without following the mandatory procedure and hence he had filed the reference, wherein the impugned award has been passed by the Labour Court.

4. Having heard the learned counsel for the respective parties and considering the material on record, it is clear that the respondent was working as daily wager under the Forest Department more particularly under the scheme for taking care of plantation. Considering all the aspects of the matter and relevant proposition of law, in view of the decision of the Larger Bench of this Court in the case of Amreli Municipality Vs. the case of Gujarat Pradesh Municipal Employees Union, reported in 2004 (3) G.L.R. 1981 and the decision rendered in the case of Delhi Development Horticulture Employees Union Vs. Delhi Administration, reported in AIR 1992 SC 789, the respondent has no right to the post and the respondent is not entitled for reinstatement. The Labour Court has, therefore, erred in passing the impugned award and therefore, the impugned Award is,

illegal and the same is required to be quashed and set aside.

5. In the result, petition is allowed. The impugned Award dtd.31/3/1998 passed by the Labour Court, Godhra in Reference (LCG) No.206 of 1991 is quashed and set aside.
Rule is made absolute to the aforesaid extent.

(SHARAD D.DAVE,J.)

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